116 FERC ¶ 61, 238
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Northern Natural Gas Company	Docket No. CP06-39-000
Duke Energy Field Services, LP	Docket No. CP06-40-000
Duke Energy Field Services, LP	Docket No. CP06-44-000

ORDER DENYING REQUESTS FOR ABANDONMENT AUTHORITY, DETERMINATION THAT FACILITIES ARE NON-JURISDICITONAL GATHERING FACILITIES AND LIMITED-TERM, LIMITED-JURISDICTION CERTIFICATE

(Issued September 8, 2006)

1. On December 16, 2005, Northern Natural Gas Company (Northern Natural) filed an application pursuant to section 7(b) of the Natural Gas Act (NGA) requesting authorization to abandon part of its interstate pipeline system in its Field Area in the states of Texas, Kansas, and Oklahoma known as the Beaver Wet System by sale to Saleco, a yet to be named limited liability company. Upon the transfer, Saleco would sell its membership interest to Duke Energy Field Services, LP (Duke). Northern Natural requests that the Commission grant any required authorizations under section 7, of the NGA (and any necessary waivers) since all of the assets to be transferred to Saleco would be simultaneously controlled by Duke upon closing of the transaction. Northern Natural also requests approval to abandon services with respect to primary receipt and/or delivery points located on the facilities proposed for abandonment. Finally, Northern Natural requests that the Commission determine that Northern Natural's proposed incidental compression service for Duke would constitute a non-jurisdictional service in connection with Duke's gathering activities.

2. Concurrently, Duke filed a petition pursuant section 385.207(a)(2) of the Commission's regulations requesting a declaratory order finding that the Beaver Wet System facilities, upon transfer to Duke, would perform a gathering function and would

thus be exempt from the Commission's jurisdiction pursuant to section 1(b) of the NGA.[1] On December 30, 2005 Duke also filed an application pursuant to section 7(c) of the NGA for a limited-term, limited-jurisdiction certificate of public convenience and necessity to permit Duke to deliver certain raw gas supplies to a processing plant without having Duke's related gathering facilities and operations becoming subject to the Commission's jurisdiction.

3. Since, for the reasons discussed below, we find that the subject facilities, when viewed as a whole, are not non-jurisdictional gathering facilities but instead are facilities used to provide interstate natural gas transmission services, we will deny Northern Natural's and Duke's requests.

I. Background and Proposal

A. Northern Natural Docket No. CP06-39-000

4. Northern Natural owns and operates an interstate natural gas pipeline extending from the Permian Basin in Texas and New Mexico to the upper Midwest consisting of over 16,500 miles of pipeline. Northern Natural's Field Area System is located in Texas, Oklahoma, and Kansas and provides access to supplies from the Hugoton, Anadarko, Permian, and Rocky Mountain supply basins. Within its Field Area System, Northern Natural operates its Beaver Wet System which was originally constructed to deliver unprocessed gas containing liquid hydrocarbons from the Anadarko Basin[2] to processing plants in the region. Northern Natural states that the wet gas is processed primarily at the ONEOK Bushton Plant and Penn Virginia Energy, LLC Beaver Plant (Beaver Plant).[3] Northern Natural proposes to convey the Beaver Wet System to Saleco, and then the membership interests of Saleco will be conveyed to Duke in accordance with the provisions of the Purchase and Sales Agreement dated November 11, 2005, which is attached as Exhibit U to Northern Natural's application.

5. On April 6, 1943, following passage of the NGA, Northern Natural's existing Beaver system pipeline was "grandfathered" and certificated by the Commission in

[1] Duke also refers to the Beaver Wet System as the Anadarko Basin Facilities.

[2] The Anadarko Basin is located in the Texas Panhandle, northwest Oklahoma, and south-central Kansas.

[3] The ONEOK Bushton plant is located on Northern Natural's system downstream of the facilities Northern Natural proposes to abandon. The Beaver Plant is located along the Beaver Wet System.

Docket No. G-280.[4] Northern Natural looped and added compression to its system as demand for natural gas increased in the 1940s and 1950s. Northern Natural's Field Area System now consists of five parallel lines, the A, B, C, D, and E lines. Northern Natural states that it has operated its system in a manner which segregates its wet gas and dry gas systems to the greatest extent in order to avoid commingling, thus preserving the value of the liquids in wet gas for its shippers.

6. Northern Natural would retain all of the dry gas facilities, which in the Beaver Wet System sale area is comprised of portions of the A and C lines and all of the D and E lines located between El Paso Natural Gas Company's (El Paso) Dumas facility in Moore County, Texas and Northern Natural's Mullinville Compressor Station in Kiowa County, Kansas. Northern Natural states that the lines it retains will be primarily used to transport dry gas to markets on Northern Natural's system.

7. Northern Natural seeks to transfer the wet gas B line from the Sunray Compressor Station in Moore County, Texas to the Mullinville Compressor Station as well as wet gas portions of the A and C lines upstream of Northern Natural's Beaver Compressor Station in Beaver County, Oklahoma. Northern Natural states that its system was originally built for merchant service and because it no longer performs a merchant function it no longer needs to operate the Beaver Wet System to access supplies.

8. Upon transfer of the Beaver Wet System to Duke, Northern Natural asserts that wet gas will not only continue to be able to be processed at the ONEOK Bushton and Beaver Plants but also at Duke's affiliated National Helium Plant. The residue gas from all of these plants will have access to Northern Natural's markets or other downstream markets though Northern Natural's remaining system.[5] Further, Northern Natural states that the pipeline facilities it is retaining will allow it continued access to the Hugoton, Anadarko, Permian, and Rocky Mountain supply basins while its mainline to its Market Area and other Field Area interconnects will continue to have sufficient capacity to meet market requirements. Finally, Northern Natural states that residue gas from the National Helium Plant will be able to be redelivered to Northern Natural through an existing interconnection with Panhandle Eastern Pipe Line Company (Panhandle) near Mullinville, Kansas.

---

[4] *Northern Natural Gas Company*, 3 F.P.C. 967 (April 6, 1943).

[5] Northern Natural would maintain ownership and operation of wet gas pipeline facilities downstream of the Mullinville Compressor Station which would allow continued access to the ONEOK Bushton Plant. See Northern Natural's January 26, 2006 answer to protests.

9. Northern Natural explains that Duke would integrate the Beaver Wet System into its existing gathering and processing facilities which it currently operates in the vicinity, many of which are already connected to the Beaver Wet System. Northern Natural states that absent approval of the proposed acquisition of facilities, Duke has informed Northern Natural that it would build alternative gathering facilities to connect its existing gathering lines with the National Helium Plant and other Duke affiliated plants and discontinue use of Northern Natural's system. Duke is currently the primary shipper on the Beaver Wet System and gas owned by Duke or flowing through its existing gathering system constitutes nearly 83 percent of the gas flowing on the Beaver Wet System. Further, Duke owns or controls processing rights for nearly 62 percent of the gas flowing on the Beaver Wet System. Northern Natural states that integration of the Beaver Wet System into Duke's gathering system will enhance Duke's operational flexibility and efficiency in accessing and handling gas supplies. Northern Natural asserts that this will enable Duke to provide expanded gathering and processing services and expanded market access to producers. Finally, Northern Natural states that it understands that Duke will continue to deliver committed gas to the Beaver Plant and deliver gas committed to the ONEOK Bushton Plant to Northern Natural for redelivery to that facility.

1. Facilities to be abandoned

10. Northern Natural proposes to abandon by sale, approximately 419 miles of pipeline with diameters ranging from 2- to 30-inches, receipt and delivery points, compressor units located along the length of the pipelines, and other appurtenant facilities. The Beaver Wet System is located in Moore, Hutchinson, Hansford, and Ochiltree Counties, Texas; Dewey, Woodward, Ellis, Beaver, and Harper Counties, Oklahoma; and Clark and Kiowa Counties, Kansas. Northern Natural will close, lock, and tag the block valves along the facilities to separate Northern Natural's retained facilities from those to be conveyed to Duke.[6] The specific facilities are described as follows.[7]

Dumas to Sunray

11. Northern Natural intends to abandon the Dumas to Sunray C Line which is located in Moore County, Texas and is comprised of approximately 17 miles of 30-inch diameter pipeline commencing at the outlet of a scrubber vessel located near El Paso's Dumas facility and extending eastward to Northern Natural's Sunray Compressor Station.

---

[6] The locations of the valves are identified in Exhibit Z-III to Northern Natural's application.

[7] Northern Natural provided more detailed descriptions, maps, and schematics of the facilities in Exhibits Z, Z-II, Z-III, Z-IV, Z-V, Z-VI, and Z-VIII to its application.

Northern Natural states that the pipeline segment is essentially idle, except for a single farm tap. Northern Natural maintains a pressure of 180 psig on the pipeline.

Sunray to Beaver

12. Northern Natural proposes to abandon the Sunray to Beaver B Line and associated compression which are located in Moore, Hutchinson, Hansford, and Ochiltree Counties, Texas and Beaver County, Oklahoma. This segment consists of about 37 miles of 16-inch diameter, 39 miles of 26-inch diameter, and 20 miles of 30-inch diameter B Line pipeline and the Spearman Compressor Station. The Spearman Compressor Station is comprised of five compressor units totaling 12,050 horsepower. Northern Natural operates the 37-mile, 16-inch diameter segment at approximately 150 psig to provide deliveries to one master meter and three farm taps. The typical discharge pressure from the Spearman Compressor Station into the downstream 39-mile, 26-inch diameter segment is 500 psig. The 20-mile, 30-inch pipeline leading into the Beaver Compressor Station operates at 390 psig.

Spearman to Beaver

13. Northern proposes to abandon the Spearman to Beaver A Line which is located in Ochiltree County, Texas and Beaver County, Oklahoma and consists of approximately 50 miles of 24-inch diameter pipeline. Gas on this segment is received from surrounding wet gas gathering systems. The pipeline operates at a pressure of less than 100 psig on the suction side of the Spearman Compressor Station. Northern Natural also proposes to abandon the Northrup and Perryton-Barlow Compressor Stations in Ochiltree County whose discharge lines flow into the downstream portion of the Beaver A Line. The Beaver A Line operates at a pressure of less than 200 psig where it enters the Beaver Compressor Station in Beaver County, Oklahoma. The Northrup Compressor Station is comprised of two compressor units totaling 2,464 horsepower and the Perryton-Barlow Compressor Station is comprised of three compressor units totaling 2,525 horsepower.

Beaver to Mullinville

14. The Beaver to Mullinville B Line is located in Beaver and Harper Counties, Oklahoma and Clark and Kiowa Counties, Kansas and is comprised of approximately 74 miles of 26-inch diameter pipeline and 16 miles of 30-inch diameter pipeline. The suction side of the Mullinville Compressor Station is the terminus of the B Line and of the facilities to be sold. Northern Natural and Duke will establish an interconnection between the transferred facilities and Northern Natural's downstream system at this point. The Beaver to Mullinville B Line currently delivers gas to Mullinville for further transportation downstream on Northern Natural's system. Northern Natural states that Duke plans to use the B Line to deliver wet gas into Panhandle's jurisdictional wet gas system at Mullinville for further delivery to Duke's affiliated National Helium Plant for

processing. Further, Northern Natural states that residue gas from the National Helium Plant will remain available to Northern Natural's customers through an interconnection between Panhandle's and Northern Natural's dry gas systems at Mullinville.

15. Northern Natural intends to transfer seven compressor units (Units 8 through 14) totaling 14,000 horsepower at its Beaver Compressor Station that will be segregated from the remaining seven units (Units 15 though 21) totaling 28,500 horsepower. The Beaver Compressor Station will be the only compressor station in the application operated under split ownership. Upon closing of the sale, Northern Natural will be the operator of the Beaver Compressor Station for Duke, and will also provide intermittent compression services for Duke's gathering activities using the compressor units that Northern Natural intends to retain. The typical discharge pressures into the B Line downstream of the Beaver Compressor Station to Mullinville range from 570 psig to 590 psig.

16. Northern Natural also proposes to transfer the Beaver County #1, Beaver County #2, and Clark County #1 Compressor Stations located along the B Line. The Beaver County Compressor #1 Station consists of five compressor units totaling 4,010 horsepower and the Beaver County Compressor #2 Station is comprised of four compressor units totaling 3,430 horsepower. The Clark County Compressor #1 Station is comprised of three compressor units totaling 1,980 horsepower. In addition to the B Line pipeline, Northern Natural also proposes to transfer the approximately 8-mile, 12-inch diameter Clark County Line extending from the Clark County #2 Compressor Station to the B Line as well as the Clark County #2 Compressor Station comprised of four compressor units totaling 2,840 horsepower.

Beaver Southeast

17. The Beaver Southeast System is located in Beaver, Ellis, Woodward, and Dewey Counties, Oklahoma and is comprised of approximately 43 miles of 24-inch diameter, 11 miles of 16-inch diameter, 13 miles of 12-inch diameter, 18 miles of 10-inch diameter, 28 miles of 8-inch diameter, and 19 miles of 6-inch diameter pipeline and nine compressor stations. A 6-inch diameter pipeline extends from the Woodward County #3 Compressor Station to the Woodward County #2 Compressor Station. The Woodward County #3 Compressor Station consists of a single 526 horsepower compressor unit and the Woodward County #2 Compressor Station has three compressor units totaling 1,021 horsepower. The discharge pressure of the Woodward County #3 Compressor Station is approximately 421 psig.

18. Two other pipelines connect to the suction side of the Woodward County #2 Compressor Station. One pipeline extends approximately 26 miles and is made up of 10-inch and 12-inch diameter pipeline. The other pipeline is an 8-inch diameter, 18-mile pipeline paralleling a portion of the 26-mile pipeline. The suction pressure of the Woodward County #2 Compressor Station is 58 psig. Approximately 60 miles of 12-

inch, 16-inch and 24-inch diameter pipeline extends from the Woodward County #2 Compressor Station to the Beaver Compressor Station. Pressures on this pipeline segment range from 380 psig to 500 psig. Compressor stations along this segment for which Northern Natural seeks abandonment authority are Woodward County #1 Compressor Station (two units totaling 1,291 horsepower), Ellis County #2 Compressor Station (three units totaling 2,769 horsepower), Ellis County #1 Compressor Station (four units totaling 3,364 horsepower), Ellis County #3 Compressor Station (two units totaling 927 horsepower, Beaver County #6 Compressor Station (three units totaling 2,363 horsepower), and Beaver County #7 Compressor Station (three units totaling 2,633 horsepower). An 8-inch diameter, 10-mile pipeline connects the Beaver County #5 Compressor Station and the Beaver County #7 Compressor Station to the Beaver Compressor Station. This 8-inch pipeline operates at a pressure of 180 psig. The Beaver County #5 Compressor Station consists of two units totaling 310 horsepower.

Beaver Low

19. The Beaver Low system is located in Beaver County, Oklahoma and consists of 6 miles of 8-inch diameter pipeline, 3 miles of 10-inch diameter pipeline, the Beaver County #3 Compressor Station (one 450 horsepower unit), and the Beaver County #13 Compressor Station (one 546 horsepower unit). The system currently operates at a pressure of 205 psig and moves gas to the Beaver Compressor Station.

Beaver Northwest

20. The Beaver Northwest system is located in Beaver County, Oklahoma and is comprised of 13 miles of 12-inch diameter pipeline and the Beaver County #12 Compressor Station (four units totaling 2,921 horsepower). The Beaver Northwest system operates at a pressure of 180 psig and moves gas to the Beaver Compressor Station.

2. Operation of Beaver Compressor Station and Compression Service

21. As explained above, ownership of the Beaver Compressor Station would be split between Northern Natural and Duke. At closing, Northern Natural would enter into an Operating and Maintenance Services Agreement with Duke pursuant to Schedule 6.1(d) to the Purchase and Sale Agreement provided in Exhibit U to Northern Natural's application under which Northern Natural would operate Duke's facilities at the Beaver Compressor Station. Northern Natural also proposes to provide intermittent non-jurisdictional compression service to Duke at the Beaver Compressor Station pursuant to Article 1 of the Operating and Maintenance Services Agreement.

22. The compression service would be provided by Northern Natural when: (1) Duke's volumes require additional compression; and (2) Northern can perform such compression service without detriment to Northern Natural's shippers. Examples of when this would occur are when Duke's compressors are down due to repairs or maintenance or if capacity is available to provide excess compression service. Northern Natural states that compression service would be a non-jurisdictional service for which Northern Natural would charge Duke $0.04 per Dth plus the share of the actual fuel used for providing the service.[8] Northern Natural asserts that proposed service is non-jurisdictional because its purpose is to aid Duke in its gathering activities and will not be used to facilitate the transportation of compressed volumes. Northern Natural argues that the proposed non-jurisdictional compression service is limited when compared to the volumes compressed by the Beaver Compressor Station and that the Commission has previously recognized the dual function of facilities where the scope of the jurisdictional activities is limited.[9]

3. Impact on Services

23. Northern Natural asserts that the proposed abandonment will not adversely impact any firm services for Northern Natural's shippers. Current shippers that flow gas from receipt points on the sale facilities to delivery points on the sale facilities will be served by Duke under mutually agreeable terms and conditions. Other shippers that have flowed gas on the sale facilities can be accommodated on the facilities that remain with Northern Natural with the exception of: (1) gas received from the Cargray Plant currently flowing on an interruptible and alternate firm basis on the Texas A Line[10]; and (2) gas received at

[8] Northern Natural asserts that there will be no co-mingling of Northern Natural's dry gas volumes and Duke's wet gas volumes.

[9] Northern Natural cites: *Sabine Pipe Line Co.*, 58 FERC ¶61,120 at p. 61,392 (1992); *Transok Inc.*, 97 FERC ¶ 61,362 at pp. 62,679-80 (2001); *Ormat Inc.*, 64 FERC ¶ 61,036 (1993); and *TriState Pipeline, L.L.C.*, 87 FERC ¶ 61,226, *reh'g*, 88 FERC ¶ 61,328 (1999), *vacated*, 90 FERC ¶ 61,258 (2000).

[10] The Cargray Plant, owned by Eagle Rock Energy, LLC, is located in Carson County, Texas and currently delivers about 7,000 MMBtu per day of residue gas to a portion of the A Line that Duke will not acquire. The gas is then delivered to points on the sale facilities. The A Line from the Spearman Compressor Station to the Beaver Compressor Station will be transferred to Duke. Northern Natural has a tie-over from the A Line to its C Line at Block Valve 5. However, gas will not be capable of flowing into the C Line at this tie-over due to the pressure differential.

ONG I and II which has the ability to be delivered to other markets.[11] Northern Natural states that it is working with Duke to provide alternatives to the plant owners and shippers for the gas that is currently flowing from the Cargray Plant.

24. Northern Natural states that it has notified all firm shippers with primary receipt and/or delivery points on the subject facilities of its intent to sell the facilities to Duke and states that all affected firm shippers will have the opportunity, prior to abandonment, to realign firm entitlements currently assigned to point(s) on the subject facilities to other valid transportation point(s) on Northern Natural's system, subject to Northern Natural's tariff and the availability of capacity at such point(s).[12] Northern Natural states that farm tap customers currently served on the subject facilities will be served by Duke after the sale.[13] Finally, Northern Natural states that any receipt and delivery points located on the subject facilities will be removed from its point catalog system after the sale.

4. Accounting Information

25. Northern Natural states that as set forth in Exhibit Y to the application, the net book value of the Field Area depreciable assets was determined by allocating the Field Area accumulated composite depreciation reserve balances to each surviving asset based on the age and historical depreciation rate of each surviving asset. Northern Natural asserts that no depreciable asset was allocated accumulated depreciation in excess of its original cost. The tax basis for the facilities is $18,609,872.

5. Public Convenience and Necessity

26. Northern Natural states that the proposed abandonment is permitted and required by the public convenience and necessity. Northern Natural states that the subject facilities were originally constructed to support a merchant function and that the facilities are not integral to Northern Natural's transportation service. Northern Natural further states that the sale of the assets will reduce the cost of doing business in its Field Area by eliminating operating and maintenance expenses estimated by Northern Natural to be

[11] Northern Natural states that ONEOK Gas Transportation, L.L.C. (ONEOK Transportation) makes occasional deliveries at ONG I and II on the Beaver Southeast lateral on an interruptible or alternate firm basis.

[12] Northern Natural identifies the shippers with primary firm entitlements in Exhibit W to its application.

[13] The farm tap customers are identified in Exhibit Z-V of Northern Natural's application.

$7.4 million per year.[14] In addition, Northern Natural states that costs associated with the facilities will be removed from Northern Natural's rate base in its next general section 4 rate proceeding. Also, Northern Natural states that it will have sufficient pipeline capacity to continue to access supplies in the area.

27. Northern Natural states that the proposed abandonment and transfer of the facilities to Duke will enable Duke to further develop its gathering system in the Anadarko Basin to provide competitive gathering and gas processing services, as well as expanded market access to producers. Further, Northern Natural asserts that Duke has informed Northern Natural that Duke intends to build substantial duplicative facilities to interconnect its gathering system if the transfer is not approved. Finally, Northern Natural states that Duke will continue to provide service to existing Northern Natural customers on the subject facilities.

B. Duke Energy Field Services LP, Docket No. CP06-40-000

28. In Docket No. CP06-40-000, Duke filed a petition pursuant to section 385.207(a)(2) of the Commission's regulations requesting a declaratory order finding that the Beaver Wet System facilities, upon transfer to Duke, would perform a gathering function and would thus be exempt from the Commission's jurisdiction pursuant to section 1(b) of the NGA.[15] Duke operates a large gathering system in the vicinity of Northern Natural's Beaver Wet System and proposes to integrate the facilities to be acquired from Northern Natural into its existing gathering system. Duke notes that much of its existing gathering system was at one time owned by Northern Natural and was subsequently spun-off to GPM Gas Corporation, the predecessor of Duke.[16] Duke argues that once the subject facilities are integrated with its existing gathering system an application of the Commission's modified primary function test will show that the facilities will perform a solely non-jurisdictional gathering function.

---

[14] Included in this amount is the estimated revenue from the compression service that would be provided to Duke at the Beaver Compressor Station.

[15] Duke is a Delaware limited partnership with its principal office in Denver Colorado. Duke is owned indirectly by the holding company Duke Energy Field Services, LLC, which in turn is owned 50% by Duke Energy Enterprises Corporation and 50% by Phillips Gas Company. The ultimate parents of Duke are Duke Energy Corporation and ConocoPhillips, each of which owns a 50% interest in Duke.

[16] *Northern Natural Gas Company*, 73 FERC ¶ 61,223 (1995).

C. Duke Energy Field Services, LP, Docket No. CP06-44-000

29. In Docket No. CP06-44-000, Duke requests, pursuant to section 7(c) of the NGA, a limited-jurisdiction, limited-term certificate of public convenience and necessity to allow Duke to deliver certain wet gas supplies to its affiliated National Helium Plant on Panhandle's system without having Duke's related gathering facilities become subject to the Commission's jurisdiction. Duke requests this authorization on an interim basis until such time as the proposed transfer of Northern Natural's facilities occurs. Specifically, Duke proposes to reactivate its Elmwood interconnection between a 16-inch gathering line and Northern Natural's Beaver Wet System at Northern Natural's Beaver Compressor Station. Duke's wet gas would flow northward on Northern Natural's Beaver Wet System to the Elmwood interconnection. From there the wet gas would move westward on Duke's line to an interconnection with Panhandle's Texas Rich Pipeline for transportation northeast to Duke's affiliated National Helium processing plant.

30. Also, Duke proposes to establish a new interconnection between its gathering system in Seward County, Kansas and Northern Natural's Liberal Line. This would allow Duke to flow wet gas southwest from Northern Natural's Beaver Wet System at Mullinville on Northern's Hugoton A Line to Northern Natural's Liberal Line. The wet gas would then flow southward into Duke's gathering system to the interconnection with Panhandle. The wet gas would then be transported by Panhandle to the National Helium Plant.

II. Notices, Interventions, Comments, Protests, and Answers

31. Notices of Northern Natural's abandonment application in Docket No. CP06-39-000 and Duke's request for a jurisdictional determination in Docket No. CP06-40-000 were published in the *Federal Register* on January 3, 2006.[17] Notice of Duke's request for a limited-jurisdiction, limited-term certificate in Docket No. CP06-44-000 was published in the *Federal Register* on January 13, 2006.[18] Numerous parties filed timely interventions in the proceedings.[19] A list of interveners is in the Appendix to this order.

32. ExxonMobil Gas & Power Marketing Company, a division of ExxonMobil Corporation (ExxonMobil) filed late interventions in all three dockets. The Independent

[17] 71 *Fed. Reg.* 103 and 104 (Jan. 3, 2006).

[18] 71 *Fed. Reg.* 2,203 (Jan. 13, 2006).

[19] Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 CFR § 385.214(c) (2006).

Petroleum Association of America (IPAA), the Kansas Corporation Commission (Kansas Commission), Panhandle, and the Panhandle Producers & Royalty Owners Association (Panhandle Producers) filed late interventions in Docket Nos. CP06-39-000 and CP06-40-000. Aquila Inc. d/b/a Aquila Networks (Aquila) filed a late intervention in Docket No. CP06-40-000. We will grant the late motions to intervene since to do so will not delay, disrupt, or otherwise prejudice the proceeding or other parties.[20] The late interveners are included in the list of interveners in the appendix to this order.

33. The Northern Municipal Distributors Group and Midwest Region Task Force Association (Municipals) and Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin), and CenterPoint Energy Resources Corp., dba CenterPoint Energy Minnesota Gas (collectively Northern States) filed comments in their respective interventions seeking confirmation that approval of Northern Natural's proposed abandonment would not constitute approval of the transactions for ratemaking purposes at this time.[21] The IPAA, Mewbourne Oil Company (Mewbourne), ONEOK Energy Services, L.P. (ONEOK Energy), ONEOK Field Services Company and ONEOK Bushton Processing, Inc. (ONEOK Field and ONEOK Bushton), and ONEOK Gas Transportation, L.L.C. (ONEOK Transportation) protested Northern Natural's abandonment application in Docket No. CP06-39-000 and Duke's request for a gathering determination in Docket No. CP06-40-000. ONEOK Energy, ONEOK Field, and ONEOK Bushton, ONEOK Transportation, and the IPAA requested consolidation of those proceedings and an evidentiary hearing. Mewbourne requested that the applications be dismissed. ONEOK Field, ONEOK Bushton, and ONEOK Transportation jointly protested Duke's application in Docket No. CP06-44-000.

34. Northern Natural, Duke, and the protestors filed a series of answers in Docket Nos. CP06-39-000 and CP06-40-000. Mewbourne filed a motion to show cause and motion to dismiss both of these applications and Northern Natural and Duke filed answers. Duke and Northern Natural filed a joint motion to expedite both applications and various parties filed answers. Duke filed an answer to the joint protest of ONEOK Transportation, ONEOK Field, and ONEOK Bushton in Docket No. CP06-44-000. The protestors filed an answer to Duke's answer. Our procedural rules generally do not permit answers to protests and answers.[22] However, we will accept the various answers because they provide information that will assist us in our decision making.

---

[20] 18 CFR § 385.214(d) (2006).

[21] The Municipals filed interventions in CP06-39-000 and CP06-40-000. Northern States filed an intervention in CP06-39-000.

[22] 18 CFR § 385.213(a)(2) (2006).

Protests and Answers in Docket Nos. CP06-39-000 and CP06-40-000

35. In general ONEOK Field, ONEOK Bushton, ONEOK Transportation, ONEOK Energy (collectively ONEOK Companies) [23] and the IPAA argue that Northern Natural has failed to demonstrate that the proposed abandonment is in the future public convenience and necessity. The IPAA asserts that Northern Natural's and Duke's spinoff proposal will result in the abandonment of several active receipt and delivery points on Northern Natural's system. The IPAA argues that this would adversely affect producers and purchasers of natural gas because there is no guarantee that existing shippers will receive the same level of service from Duke that they currently receive from Northern Natural. ONEOK Transportation and ONEOK Energy are particularly concerned about the abandonment of two delivery interconnections between Northern Natural and ONEOK Transportation on the Beaver Southeast System in Woodward County, Oklahoma previously identified by Northern Natural as ONG I and ONG II. ONEOK Transportation and ONEOK Energy state that they are entitled to continuity of service to these delivery points regardless of the interruptible nature of the service contracted for or the small volumes delivered to those points. ONEOK Transportation and ONEOK Energy assert that the interconnections are used in the winter time to meet the peak demands of customers on Northern Natural's system.

36. Northern Natural responds that if ONEOK Energy truly needed continued access to the two delivery points, ONEOK Energy would hold firm capacity, instead of interruptible capacity at these points. Northern Natural states that ONEOK Transportation has numerous interconnections with other pipeline systems, that ONEOK Energy's deliveries to those two delivery points are only a small percentage of ONEOK Energy's total deliveries, and in any event ONEOK Energy's end-users can be served through other interconnections.

37. ONEOK Field and ONEOK Bushton assert that the proposed abandonment is anticompetitive because it would reduce shippers' market options by redirecting wet gas for processing from ONEOK Field's Bushton Plant to Duke's affiliate owned National Helium Plant. ONEOK Field and ONEOK Bushton argue that they would be put at a competitive disadvantage due to pancaking of rates and fuels that would occur if the Beaver Wet System is transferred to Duke. ONEOK Field and ONEOK Bushton also state that, even if Northern Natural continues to deliver gas to the Bushton Plant after the

[23] ONEOK Energy is a shipper on Northern Natural's system. ONEOK Field is an operator of gathering systems in Northern Natural's Field Area and operates the Bushton Processing Plant. ONEOK Bushton owns the Bushton Lease, contracts well head gas, and is a shipper on Northern Natural's system. ONEOK Transportation operates an intrastate pipeline system solely within the state of Oklahoma and has two delivery interconnections on the facilities which Northern Natural proposes to sell.

sale, shippers on Northern Natural's system have the rights to all components of the gas stream, btus or liquids, and that Northern's proposed abandonment would result in commingling of wet, unprocessed gas and dry, processed gas, thereby causing a significant portion of valuable liquids to be "sponged" by the dry gas.[24] Mewbourne states that Duke's purchase of the subject facilities would give it monopsony power over gas gathering in the Anadarko Basin, diverting wet gas away from the Bushton Plant and leaving producers without access to Northern Natural's interstate transmission system. The IPAA is concerned that the sale of facilities to Duke would result in the concentration of a significant portion of the area's gas transmission and gathering facilities in Duke's control.

38. Northern Natural states that it is retaining facilities that could deliver wet gas to ONEOK Field's Bushton Plant, that ONEOK Field has no tariff right to process gas that flows on Northern Natural's system, and that Duke has committed to continue to deliver wet gas to the Bushton Plant. Northern Natural and Duke state that gas that continues to have processing agreements at the Bushton Plant would continue to be able to flow through Northern Natural's system after the sale of the subject facilities to Duke, but that additional processing competitors would also be introduced into the market, thus increasing processing options to producers and shippers.

39. Duke states that although it is the largest gatherer in the area, it has many competitors, and that producers have many alternatives to using Duke and its affiliates as a gas gatherer. Due to the existence of alternative transportation options, Northern Natural's retention of substantial transmission facilities, and the capacity for continuity of service on the facilities to be purchased by Duke, Northern Natural states, the proposed abandonment will not diminish competition or service to customers. Northern Natural and Duke also state that Duke's ownership and operation of the subject facilities in conjunction with its existing gathering system will give it the ability to make the extraction and handling of declining reserves from the Anadarko Basin more efficient than Northern Natural, which no longer performs a merchant function.

40. All of the protesters assert that the subject facilities are not non-jurisdictional gathering facilities, emphasizing (1) the long lengths and large diameters of pipelines, (2) that the compression facilities are used to compensate for loss of pressure as gas moves through the pipeline, despite the location of the facilities upstream of processing

[24] The potential for "sponging" to occur would happen if ONEOK Field and ONEOK Bushton delivered gas into Northern Natural's dry system rather than into the wet gas facilities which Duke proposes to acquire. Pancaking of rates would occur if the protestors elected to ship wet volumes through the prospective Duke facilities for delivery into wet gas facilities that Northern Natural will retain downstream of Mullinville.

plants, (3) that wells are not directly connected to the pipelines, and (4) the high operating pressures of the facilities are indicative of a transmission function. The protesting ONEOK Field, ONEOK Bushton, ONEOK Energy and ONEOK Transportation also state that Duke and Northern Natural have not explained why other lines that run parallel to the subject facilities are considered transmission facilities, and that the maps attached to Northern Natural's application do not support Duke's contention that the facilities will operate as a spine or backbone of gathering configurations.

41. Mewbourne contends that the map in Duke's Exhibit A is not a reliable or useful map, also stating that the maps in Exhibit Z-VII of Northern's application do not support Duke's contention that the facilities operate as the backbone of a spine-type gathering system; Mewbourne states that the facilities resemble an inverted "Y", with its junction at the Woodward County #2 Compressor Station. Accordingly, Mewbourne does not protest Duke's petition with respect to the facilities upstream of the Woodward County #2 Compressor Station, but objects to Duke's requested jurisdictional determination only with respect to the pipeline and associated compressors downstream of the Woodward County #2 Compressor Station– the downstream stem of the inverted "Y." Mewbourne also states that the pipelines extend beyond the central point in the field and that the location of the subject facilities upstream of processing plants is not material because the processing plants are straddle plants that perform a transmission function.

42. Duke states that the subject facilities will operate as the spine of Duke's existing gathering facilities, noting that the map in Duke's Exhibit A shows gathering lines connected at 13 interconnection points, and that Northern Natural's maps do not show Duke's facilities because those maps only show Northern Natural's facilities, not Duke's existing gathering facilities, which will be operated in conjunction with the subject facilities. Duke states that the subject facilities' location in the same area as transmission facilities does not preclude the facilities from being classified as gathering. Duke states that compression on the pipelines, which, Duke emphasizes, are located upstream of processing plants, will facilitate the flow of gas directly from wells and deliver raw gas to processing facilities, consistent with a gathering function, regardless of whether the plants are straddle plants. Duke states that the lengths, diameters and operating pressures of the facilities, as well as the overall circumstances in which the facilities will operate are consistent with a gathering function.

43. Mewbourne asserts that, since Duke acknowledges that Northern Natural's Exhibit Z-VIII omits data that Mewbourne states is essential to the applications' completeness, the Commission should order Northern Natural to show cause why the Commission should not reject the exhibit, and if Northern Natural fails to refute Duke's assertions regarding the exhibit, the Commission should dismiss these proceedings without prejudice to refiling of complete applications. Northern Natural and Duke oppose the motion as a delaying tactic on the part of Mewbourne; Northern Natural states that the

exhibit is complete because Northern Natural is only required to provide a map showing Northern Natural's facilities.

III. Discussion

44. Initially, we find that the record in these proceedings, including Northern Natural's Exhibit Z-VIII, is adequate for us to make a determination regarding the proposed abandonment, transfer, and refunctionalizaton of the subject facilities. Therefore, we deny the requests for consolidation and an evidentiary hearing, as well as the motions to show cause and dismiss.

A. Abandonment of Jurisdictional Facilities

45. Since the facilities proposed to be abandoned are certificated to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the abandonment of Northern Natural's certificated interests in the facilities requires Commission authorization under NGA section 7(b).

46. Northern Natural, states that historically, it used the Beaver Wet System to support its discontinued merchant service and those facilities are not integral to its current natural gas transportation business. Further, Northern Natural states that the elimination of the operational costs of the subject facilities and their eventual removal from Northern Natural's rate base will reduce transportation costs for Northern Natural's shippers. As discussed below, however, we find that the subject facilities, when viewed as a whole, are not non-jurisdictional gathering facilities but instead are facilities used to provide interstate natural gas transmission services. Thus, we will deny Duke's request for a declaratory order finding that the subject facilities are, or would be, non-jurisdictional gathering facilities. Further, since the requested declaratory order was the predicate for Northern Natural's application for abandonment authority, we will also deny that application.

B. Jurisdictional Status of the Facilities

47. Under section 1(b) of the NGA, the Commission's jurisdiction does not extend to facilities used for "the production or gathering of natural gas" or to gathering services.[25] The Commission has developed over the years, a number of legal tests to determine

[25] The courts have narrowly construed the NGA section 1(b) exemption to "the physical act of drawing gas from the earth and preparing it for the first stages of distribution." *See, e.g. Transcontinental Gas Pipe Line Corp. v. State Oil & Gas Board*, 474 U.S. 409, 418 (1986) (*quoting Northern Natural Gas Co. v. State Corporation Commission of Kansas*, 372 U.S. 84 (1963)).

which facilities are non-jurisdictional gathering facilities.[26] The Commission presently relies on the modified "primary function test," which includes consideration of several physical and geographical factors, including: (1) the length and diameter of the pipelines; (2) the extension of facilities beyond the central point-in-the-field; (3) the facilities' geographic configuration; (4) the location of compressors and processing plants; (5) the location of wells along all or part of the facilities; and (6) the operating pressures of pipelines. The Commission does not consider any one factor to be determinative and recognizes that all factors do not necessarily apply to all situations.[27]

48. In addition to the factors enumerated above, the Commission also weighs any and all other relevant facts and circumstances of a particular case, including non-physical criteria.[28] The Commission also may consider the purpose, location, and operation of facilities, the general business activity of the owner of the facilities, and whether the jurisdictional determination is consistent with the NGA and the Natural Gas Policy Act of 1978. The United States Court of Appeals for the Fifth Circuit stated in *Sea Robin*,[29] however, that while non-physical factors, such as the business of the owner or prior certification of facilities, may be relevant considerations for determining the demarcation point between transmission and gathering facilities, these kinds of non-physical factors are secondary to the physical factors.

49. Applying the primary function test to the subject facilities, the Commission finds that the primary function of the facilities is transmission. The diameters, lengths and operating pressures of the majority of the pipeline segments at issue in this proceeding are not comparable to those the Commission have found to be consistent with a gathering function. There are numerous compression facilities that maintain the operating pressures at transmission levels in order for gas to move through the pipes, but no wells directly attach to pipeline segments; this is also inconsistent with a finding that the subject facilities would function as a spine or any other kind of gathering configuration.

50. The Commission orders cited by Duke do not support its position that the subject facilities are gathering facilities. In *Transcontinental Gas Pipe Line Corporation*,[30] the

---

[26] *See Amerada Hess Corp*., 52 FERC ¶61,268 (1990); and *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983) (*Farmland*).

[27] *See, e.g., TOMCAT*, 59 FERC ¶ 61,340, at 62,239 (1992).

[28] *Id*. and *Amerada Hess Corp*., 52 FERC ¶ 61,268 (1990).

[29] 127 F.3d 365 at 371 (5th Cir. 2003).

[30] 96 FERC ¶ 61,115 (2001).

approximately 270 miles of pipeline we found to be gathering included 73 receipt points, and over 76 percent of the pipeline segments were 20 inches or less in diameter. Further, the 30-mile segment of 30-inch diameter pipe at issue in that proceeding had no compression on it. In *El Paso Natural Gas Company*,[31] we found facilities including 43.90- and 20.47-mile segments of 30-inch diameter pipe to be gathering. Of the approximately 6,489 miles of pipeline at issue in that proceeding, however, less than five percent were 20 inches or more in diameter, and all of the large segments in question were connected to large numbers of wells through numerous laterals. In *Columbia Gas Transmission Corporation*,[32] we found 4,005 pipeline segments totaling approximately 3,412 miles in length and including a 33-mile segment of 20-inch diameter pipe and a 34.10- mile segment of 26-inch diameter pipe to be gathering, but over 95 percent of the pipeline facilities were less than 12 inches in diameter. In *KN Wattenberg Transmission, LLC*,[33] we found facilities that included 24-inch diameter pipe and 20-inch diameter pipe to be gathering, but these segments were 6.3 and 32.5 miles long, respectively, and had numerous well connections to form a spine-type gathering configuration. In *Ozark Gas Transmission, LLC*,[34] we found a 13-mile, 6-inch diameter pipeline with a couple shorter lines feeding into it and multiple well connections to be a spine-type gathering configuration.

51. In contrast, the subject facilities in this proceeding consist of approximately 419 miles of pipeline segments, including 74- and 39-mile lengths of 26-inch diameter pipe, 16-, 17-, and 20-mile lengths of 30-inch diameter pipe, and 50- and 43-mile lengths of 24-inch diameter pipe; there are 22 compressor stations along the lengths of the pipeline segments, but no direct well connections, and the pipelines extending from the Spearman Compressor Station to the Mullinville Compressor Station have only 13 receipt points connected along 190 miles of pipeline. The overall configuration of the subject facilities operated by Northern Natural reflects an approximately 113-mile pipeline consisting of 16-inch to 30-inch diameter pipeline paralleled by a 50-mile, 24-inch diameter pipeline moving gas from Dumas to the Beaver Compressor Station;[35] an 86-mile pipeline with diameters of 10 inches to 24 inches and an 8-inch diameter, 10-mile parallel pipe moving

[31] 72 FERC ¶ 61,220 (1995).

[32] 79 FERC ¶ 61,045 (1997).

[33] 97 FERC ¶ 61,239 (2001).

[34] 101 FERC ¶ 61,205 (2002).

[35] Northern Natural currently moves gas from west to east on these facilities. Duke proposed to operate the westernmost portion of these facilities to flow gas from east to west.

gas to the Beaver Compressor Station; and an approximately 90-mile, 24-inch and 30-inch diameter pipeline moving gas from the Beaver Compressor Station to the Mullinville Compressor Station. Rather than any of these pipelines constituting the backbone of a gathering system, discrete gathering systems off these lines with their own spine- or web-like configurations feed gas into Northern Natural's facilities.

52. Further, along most of the facilities that Northern Natural proposes to transfer to Duke, there are parallel facilities that Northern Natural would retain. These parallel lines operate as part of Northern Natural's mainline, which extends beyond the Mullinville compression station. While the facilities to be transferred transport wet gas, which can be indicative of a gathering function, the wet gas in this case would continue to flow from Mullinville into wet gas facilities owned and operated by either Panhandle or Northern as jurisdictional transmission facilities.

53. The circumstances in this proceeding demonstrate why the Commission has held that it must consider all relevant factors and not allow one factor to be determinative when applying the primary function test in a particular case.[36] Here, when all of the physical characteristics of the subject facilities are considered – in particular, that the majority of the pipeline segments are long, large diameter pipes with numerous compression stations, no direct well connections and relatively few receipt points -- the Commission must conclude that the primary function of these facilities is transmission. Since the subject facilities operate as part of the system Northern Natural uses to provide interstate transmission service, we are denying Northern Natural's request for abandonment authority and Duke's petition for a determination that the subject facilities would be non-jurisdictional gathering facilities upon transfer to Duke.

C. Limited-Term, Limited-Jurisdiction Certificate

54. Duke requests a limited-term, limited-jurisdiction certificate to transport wet gas to and from interconnections with Northern Natural and Panhandle in order to access its affiliate owned National Helium Plant located on Panhandle's system for a term of one year or 60 days after the date the Commission issues its orders in Northern Natural's abandonment proceeding and Duke's request for a declaratory order. In footnote 1 of Duke's application for a limited-term, limited-jurisdiction certificate, Duke states that should the Commission deny either the pending request by Northern Natural for abandonment authority in Docket No. CP06-39-000 or Duke's petition for a declaratory order in Docket No. CP06-40-000, the foundation for this application will become moot and the authorization requested authorization will no longer be necessary. Because we are denying both Northern Natural's abandonment application and Duke's petition for a

[36] *TOMCAT*, 59 FERC ¶ 61,340 at 62,239 (1992).

declaratory order, we find, consistent with Duke's statement, that the application for a limited-term, limited-jurisdiction certificate is moot.

The Commission orders:

(A) Northern Natural is denied permission and approval under NGA section 7(b) to abandon its interests in the facilities described in this order.

(B) The subject facilities are transmission facilities subject to the Commission's jurisdiction pursuant to NGA section 1(b); Duke's request for a jurisdictional determination that the subject facilities serve a gathering function is denied.

(C) The late interventions are accepted.

(D) Northern Natural's, Duke's, Mewbourne's and the ONEOK's answers are accepted.

(E) The requests for consolidation and evidentiary hearing are denied.

(F) The motions for a show cause order and to dismiss are denied.

(G) Duke's application for a limited-jurisdiction, limited-term certificate is denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

Appendix
List of Intervenors

Northern Natural Gas Company, Docket No. CP06-39-000

Aquila Inc. d/b/a Aquila Networks
Duke Energy Field Services, LP
ExxonMobil Gas & Power Marketing Company, a division of Exxon Mobil Corporation
Independent Petroleum Association of America
Kansas Corporation Commission
Madison Gas and Electric Company
Mewbourne Oil Company
Northern Municipal Distributors Group and Midwest Region Task Force Association
Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin), and CenterPoint Energy Resources Corp., dba CenterPoint Energy Minnesota Gas
ONEOK Energy Services Company, L.P.
ONEOK Field Services Company and ONEOK Bushton Processing (jointly)
ONEOK Gas Transportation, L.L.C.
Panhandle Eastern Pipe Line Company, L.P.
Panhandle Producers & Royalty Owners Association
PVR Midstream LLC

Duke Energy Field Services, LP, Docket No. CP06-40-000

Aquila Inc. d/b/a Aquila Networks
ExxonMobil Gas & Power Marketing Company, a division of Exxon Mobil Corporation
Independent Petroleum Association of America
Kansas Corporation Commission
Mewbourne Oil Company
Northern Municipal Distributors Group and Midwest Region Task Force Association
Northern Natural Gas Company
ONEOK Energy Services Company, L.P.
ONEOK Field Services Company and ONEOK Bushton Processing (jointly)
ONEOK Gas Transportation, L.L.C.
Panhandle Eastern Pipe Line Company, L.P.
Panhandle Producers & Royalty Owners Association
PVR Midstream LLC

Duke Energy Field Services, LP, Docket No. CP06-44-000

ExxonMobil Gas & Power Marketing Company, a division of Exxon Mobil Corporation
ONEOK Gas Transportation, L.L.C., ONEOK Field Services Company, and ONEOK Bushton Processing, Inc. (jointly)
Northern Natural Gas Company
Panhandle Eastern Pipe Line Company, L.P.